

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ABILITY INSURANCE COMPANY,

Plaintiff,

v.

Civil Action No.: 1:20-cv-03851 (GBD)

ST PAPER, LLC

Defendant.

**DECLARATION OF ANGELO A. STIO, III, ESQ. IN SUPPORT OF PLAINTIFF'S
REPLY BRIEF ON MOTION FOR SUMMARY JUDGMENT**

ANGELO A. STIO, III hereby declares, pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner in the law firm Troutman Pepper Hamilton Sanders, LLP, attorneys for Plaintiff Ability Insurance Company ("Plaintiff") in the above captioned matter. I am fully familiar with the facts and circumstances discussed below.

2. I submit this Declaration in support of Plaintiff's Reply Brief in Support of Its Motion for Summary Judgment.

3. Attached hereto as Exhibit A is a true and accurate copy of excerpts from the transcript of the deposition of David Charsky taken on July 27, 2021 ("Charsky Tr.").

DATED: New York, NY
Executed: September 24, 2021

/s/ Angelo A. Stio, III
ANGELO A. STIO, III

Ex. A

DAVID G. CHARSKY - JULY 27, 2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ABILITY INSURANCE COMPANY,

Plaintiff,

-vs-

Case No.: 1:20-cv-03851-GBD

ST PAPER, LLC,

Defendant.

VIDEOCONFERENCE
DEPOSITION OF: DAVID G. CHARSKY

DATE: July 27, 2021

TIME: 1:38 p.m. - 2:51 p.m. (EST)

DEPONENT
LOCATION: TROUTMAN PEPPER HAMILTON
SANDERS LLP
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Eighteenth and Arch Streets
Philadelphia, Pennsylvania

REPORTED BY:
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DAVID G. CHARSKY - JULY 27, 2021

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* * * * *

DAVID G. CHARSKY - JULY 27, 2021

I N D E X

EXAMINATION BY: PAGE

Mr. Smies 4

EXHIBITS MARKED: PAGE ID'D

NONE

REQUESTED INFORMATION: PAGE

1) Investment management agreement
between Monroe Capital and Ability
Insurance Company 11

2) Any documents that reflect Ability's
recovery or proceeds from the sale,
net of any expenses, for taking it
through American Boulevard property
through foreclosure 17

3) Any emails that were overlooked that
relate to any matters with respect to
Note Number 1 20

4) Total of payments made on the Green Box
debt 22

5) Document that reflects the reduction
of the amount due under the mortgage
after the sale of the mortgage itself .. 37

DAVID G. CHARSKY - JULY 27, 2021

TRANSCRIPT OF PROCEEDINGS

THE COURT REPORTER: This deposition of David G. Charsky is being conducted remotely. I have verified the witness's identity by viewing his photo ID.

Mr. Charsky, would you please raise your right hand and I will swear you in.

DAVID G. CHARSKY, called as a witness herein, having been first duly sworn/affirmed, was examined and testified as follows:

EXAMINATION

BY MR. SMIES:

Q Good afternoon, Mr. Charsky. My name is Jon Smies, and I'm an attorney with Godfrey & Kahn in our Green Bay, Wisconsin office. I represent ST Paper, LLC, the defendant in a lawsuit filed by Ability Insurance in the Southern District Court, and I am taking testimony today pursuant to a notice of deposition directed to a representative or representatives of Ability Insurance Company under Rule 30(b)(6) of the Rules of Civil Procedure. And that is -- I understand that you are being produced by the plaintiff as the representative for these matters of testimony.

4

DAVID G. CHARSKY - JULY 27, 2021

1 Is that your understanding today?

2 **A Yes, that's my understanding.**

3 Q Great. Why don't you tell me first of all
4 what's your position with Ability?

5 **A Currently I am the vice president and treasurer**
6 **of Ability Insurance Company.**

7 MR. STIO: Hey, Jonathan, can we just
8 put the stipulation on the record that objections
9 to form are going to preserve the objection so
10 that this goes smoother?

11 MR. SMIES: Yeah, that is fine, if
12 there's an objection as to form.

13 MR. STIO: Okay. Thank you.

14 Q So, Mr. Charsky, how long have you been with
15 Ability?

16 **A In this current role, seven years.**

17 Q What about any prior roles?

18 **A Yeah, previous to that I was the third-party**
19 **administrator in the accounting area for this**
20 **company. But I was not a named officer of the**
21 **company at that time.**

22 Q How long did you serve in that capacity?

23 **A Five years. So altogether around twelve --**
24 **twelve to thirteen years I've been working on**
25 **the Ability account.**

5

DAVID G. CHARSKY - JULY 27, 2021

1 **Insurance Company.**

2 Q Okay. Is he also an employee of ACAP?

3 A **Yes, he is.**

4 Q Anybody else?

5 A **No.**

6 Q Are you aware of Ability Insurance Company's
7 ownership?

8 A **Yes.**

9 Q And what is the ownership? Is it a privately
10 held corporation?

11 A **Yes, it's privately held.**

12 Q And are you an investor in Ability Insurance?

13 A **No, I'm not.**

14 Q Okay. So, Mr. Charsky, you've been with Ability
15 in one capacity or another now for some time.
16 Are you -- were you at all involved in any of
17 the events giving rise to the claims at issue
18 here in this case involving, for example, the
19 transfer of Note 1 from Maple Bridge Funding,
20 LLC to Ability?

21 A **I was involved in the funding of the original**
22 **promissory note, the 7.15 million.**

23 Q All right. Let's step back I guess for a
24 minute. You understand that there's an entity
25 called Maple Bridge Funding, LLC that's had some

10

DAVID G. CHARSKY - JULY 27, 2021

1 involvement in this series of transactions; is
2 that fair?

3 **A Yes.**

4 Q And are you aware of any relationship between
5 Ability and Maple Bridge Funding?

6 **A Yeah, so Maple Bridge Funding is an LLC set up**
7 **to fund mortgage investments by one of our**
8 **investment managers called Monroe Capital.**

9 Q And how do you know that about Maple Bridge
10 Funding, LLC? Is that a related entity to
11 Ability in some respect?

12 **A No, there's no relation at all. It's -- it's an**
13 **LLC of Monroe Capital.**

14 Q Okay. So Monroe Capital, is there any relation
15 between Monroe Capital, that entity, and Ability?

16 **A Yes. There was at the time an administrative --**
17 **or I'm sorry -- an investment management**
18 **agreement between Monroe Capital and Ability**
19 **Insurance Company.**

20 Q Okay. And that was -- under that agreement, if
21 you know, was Monroe Capital then acting as the
22 investment manager for Ability?

23 **A Yes.**

24 MR. SMIES: Okay. Counsel, I don't
25 believe I've seen that document, and maybe it's

11

DAVID G. CHARSKY - JULY 27, 2021

1 not in the scope of any prior request, but I
2 would just make a request now on the record for
3 that investment management agreement.

4 MR. GRIFFIN: I'll take your request
5 under advisement. I don't believe it was
6 responsive to the requests, but we'll take the
7 request under advisement.

8 MR. SMIES: Thank you.

9 Q So you mentioned, Mr. Charsky, that there was
10 some funding of a promissory note originally.
11 Do you have a sense of how Ability participated
12 in that funding?

13 A Yes.

14 Q All right. Can you explain to me that
15 transaction?

16 A So --

17 MR. GRIFFIN: Objection to the form
18 of the question. Go ahead, Dave.

19 A Okay. So Ability Insurance Company provided the
20 funding for that promissory note, the 7.15
21 million. But it was underwritten and sourced by
22 our investment manager Monroe Capital.

23 Q Okay. So the note -- the original note you're
24 referencing was between -- it was given by -- I
25 guess it was made by Green Box NA Green Bay, LLC

12

DAVID G. CHARSKY - JULY 27, 2021

1 in favor of Maple Bridge Funding, LLC; is that
2 your understanding?

3 **A Yes.**

4 Q Okay. But the actual funding of the monies paid
5 to Green Box NA Green Bay, LLC was, you're
6 saying, provided by Ability in the first
7 instance; is that fair?

8 **A Yes, and then was assigned -- the note and all**
9 **collateral associated with the note was assigned**
10 **to Ability Insurance Company.**

11 Q Right. I think the two occurred fairly close in
12 time, if I recall. It could be that on
13 December 10th, 2013 Green Box made the note to
14 Maple Bridge Funding and then on December 11th of
15 2013 it was an allonge executed for the payment
16 to be ordered to Ability Insurance Company by
17 Maple Bridge Funding, LLC by Tim O'Shea. Does
18 that comport with your recollection of the
19 facts?

20 MR. GRIFFIN: Objection to the form
21 of the question.

22 **A I can't confirm the exact dates. But yes, that**
23 **time frame sounds about when the initial funding**
24 **was sent to Green Box.**

25 Q Okay. And the sequence is correct, that is,

DAVID G. CHARSKY - JULY 27, 2021

1 loan to Green Box. And then after that what did
2 Ability -- what steps did Ability take to
3 collect, if any, after funding the loan?
4 Because that was back in 2013. Do you know what
5 the immediate -- what the terms of that note
6 were as far as payment to Ability?

7 MR. GRIFFIN: Objection to form.

8 **A So no communication with Maple Bridge. We**
9 **communicate with Monroe Capital.**

10 Q Okay.

11 **A Who's, again, the asset manager on the account**
12 **and the loan. So yes, we'd communicate interest**
13 **payments on that loan --**

14 Q Were there --

15 **A -- to make sure they were coming in.**

16 Q I'm sorry to interrupt. Were there payments
17 made on the Green Box loan?

18 **A Yes. Initially, yes, there were a few payments**
19 **made. Interest was paid on the loan.**

20 Q So it was sort of an interest-only situation for
21 a period of time?

22 **A Yes.**

23 Q Do you know how long payments were made or how
24 much?

25 **A I'd have to check the records. But a few months'**

21

DAVID G. CHARSKY - JULY 27, 2021

1 **worth of payments.**

2 MR. SMIES: That's information I would
3 be interested in seeing, Counsel, and if it's
4 already produced forgive me, but to the extent
5 you can find the total of payments made on the
6 Green Box debt, I would like that produced.

7 MR. GRIFFIN: Understood.

8 Q So at some point it became evident, I take it,
9 that Green Box wasn't going to pay all that was
10 due under the Green Box note? Is that a fair
11 summary of the history with Ability?

12 A **Correct. And interest stopped being paid on the**
13 **account.**

14 Q Do you know if that was before or after there
15 was a declaration of bankruptcy?

16 A **I'm not sure.**

17 Q Did you take any steps to attempt to collect on
18 that debt before initiating foreclosure, any
19 correspondence with Green Box?

20 A **No correspondence with Green Box. It would all**
21 **go through the investment manager, Monroe**
22 **Capital, who has the relationship with -- you**
23 **know, with Green Box.**

24 Q That's Tim O'Shea?

25 A **Yes. He's one of the principals.**

22

DAVID G. CHARSKY - JULY 27, 2021

1 Q And who are some other principals at Monroe
2 Capital?

3 A **There's just Tim O'Shea and Jason Harkavy are**
4 **the two individuals I would have dealt with at**
5 **Monroe.**

6 Q So you have them to thank for introducing you to
7 Mr. Van Den Heuvel, I guess?

8 A **Never met him.**

9 Q Okay. Getting you involved in this whole thing
10 I guess is a better way of putting it.

11 So you today in this litigation are seeking
12 to enforce what's been described as Note Number 1.
13 Do you understand that to be the case?

14 A **Yes.**

15 Q And that was a note executed by ST Paper made to
16 Oconto Falls Tissue, Inc. on April 16th, 2007?
17 Is that your understanding?

18 A **I'm not sure of the exact date, but yes.**

19 Q What -- so in seeking to enforce and to collect
20 on Note Number 1, is there any agreement in place
21 with any third party regarding the proceeds of
22 any effort to collect on Note Number 1?

23 A **No.**

24 Q So from Ability's point of view, it is the only
25 party that's entitled to any proceeds from

DAVID G. CHARSKY - JULY 27, 2021

collection on Note Number 1; is that fair?

A That's correct.

Q And does Ability possess the original of Note Number 1?

A Yes. I've been told we have the original in a safe deposit box.

MR. SMIES: All right. That's something I have asked to inspect and I haven't flown out there to take a look at it, and I don't know where "out there" is, frankly, but, Counsel, I guess if we need to we can coordinate on that if I'm heading out east or --

MR. GRIFFIN: If you want to take a flight out here to take a look at it we're happy to arrange it.

MR. SMIES: Okay. So it's there in your neck of the woods, TJ, in Philadelphia or New York?

MR. GRIFFIN: I believe so. Dave, do you want to tell him exactly where you believe it is, in Connecticut or --

THE WITNESS: I think it's in Pleasantville, New York.

MR. SMIES: Okay.

THE WITNESS: Just north of New York

24

DAVID G. CHARSKY - JULY 27, 2021

1 **City.**

2 Q All right.

3 MR. STIO: We'll get you the address.
4 Just shoot us a note, and we'll get you the
5 address so you can make whatever arrangements
6 you need.

7 MR. SMIES: Thank you, Angelo. I
8 appreciate that.

9 MS. GETTMAN: This is Jill Gettman.
10 I'm counsel for Ability. We also have office
11 policies we'll have to coordinate because we
12 have -- and we also have office policies that
13 you have to be vaccinated to be in that
14 location (inaudible) --

15 THE COURT REPORTER: You're cutting
16 out, Jill. I can't understand what you're
17 saying.

18 MR. SMIES: Yeah, we'll figure it out.
19 I didn't hear it all about policies in New York
20 State and everything but --

21 MS. GETTMAN: Dave and I were trying
22 to coordinate -- sorry. (Inaudible.)

23 MR. GRIFFIN: I believe Ms. Gettman
24 was just trying to represent that there are
25 policies that would have to be followed for

25